

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1458-PWS-E TCEQ ID: RN101235489 CASE NO.: 34592
RESPONDENT NAME: TurboCare, Inc.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: TurboCare, 3100 South Sam Houston Parkway E, Houston, Harris County</p> <p>TYPE OF OPERATION: Turbine repair and maintenance facility with a public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Patrick W. Dunn, General Manager, TurboCare, Inc., 3100 South Sam Houston Parkway E, Houston, Texas 77047-6508 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 26, 2007</p> <p>Date of NOV/NOE Relating to this Case: August 8, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to provide a minimum pressure tank capacity of 220 gallons. Specifically, the Facility currently operates one 120 gallon bladder pressure tank, which results in a 45% deficiency [30 TEX. ADMIN. CODE § 290.45(d)(2)(A)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$210</p> <p>Total Deferred: \$42 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$168</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, provide a minimum pressure tank capacity of 220 gallons; and</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS ID No. 1013167



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 26, 2007

TCEQ

DATES

Assigned 13-Aug-2007

PCW 31-Aug-2007

Screening 16-Aug-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent TurboCare, Inc.

Reg. Ent. Ref. No. RN101235489

Facility/Site Region 12-Houston

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 34592

Docket No. 2007-1458-PWS-E

Media Program(s) Public Water Supply

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Rebecca Clausewitz

EC's Team Enforcement Team 2

Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$200

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

5% Enhancement

Subtotals 2, 3, & 7 \$10

Notes

The compliance history enhancement is due to one prior Notice of Violation containing violations that are the same as or similar to the violations in the current enforcement action.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement*

Subtotal 6 \$0

Total EB Amounts \$886

Approx. Cost of Compliance \$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$210

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount \$210

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$210

DEFERRAL

20%

Reduction

Adjustment -\$42

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$168

Screening Date 16-Aug-2007

Docket No. 2007-1458-PWS-E

PCW

Respondent TurboCare, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34592

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN101235489

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The compliance history enhancement is due to one prior Notice of Violation containing violations that are the same as or similar to the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 16-Aug-2007		Docket No. 2007-1458-PWS-E		PCW	
Respondent TurboCare, Inc.		<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 34592		<i>PCW Revision June 26, 2007</i>			
Reg. Ent. Reference No. RN101235489					
Media [Statute] Public Water Supply					
Enf. Coordinator Rebecca Clausewitz					
Violation Number <input type="text" value="1"/>					
Rule Cite(s)		30 Tex. Admin. Code § 290.45(d)(2)(A)(ii) and Tex. Health & Safety Code § 341.0315(c)			
Violation Description		Failed to provide a minimum pressure tank capacity of 220 gallons. Specifically, the Facility currently operates one 120 gallon bladder pressure tank, which results in a 45% deficiency.			
Base Penalty					<input type="text" value="\$1,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	x	<input type="text"/>	Percent	<input type="text" value="10%"/>

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes

Without sufficient pressure tank capacity, customers and employees of the Facility could be exposed to significant amounts of contaminants that are the result of low water pressure or possible backflow, at levels that are not protective of human health.

Adjustment

Violation Events

Number of Violation Events <input type="text" value="2"/>	<input type="text" value="143"/>	Number of violation days
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<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Two quarterly events are recommended, calculated from the date of investigation, March 26, 2007, to the date the case was screened, August 16, 2007.

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$886"/>	Violation Final Penalty Total <input type="text" value="\$210"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$210"/>	

Economic Benefit Worksheet

Respondent TurboCare, Inc.
Case ID No. 34592
Reg. Ent. Reference No. RN101235489
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$10,000	26-Mar-2007	30-Jun-2008	1.3	\$42	\$844	\$886
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount to provide a minimum pressure tank capacity of 220 gallons, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$886

Compliance History

Customer/Respondent/Owner-Operator: CN600406144 TURBOCARE INC Classification: AVERAGE Rating: 3.01

Regulated Entity: RN101235489 TURBOCARE Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1013167

Location: 3100 S SAM HOUSTON PKWY E, HOUSTON, TX, 77047

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 16, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 16, 2002 to August 16, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 01/08/2004 (256662)
 - 2 08/08/2007 (543153)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	01/08/2004	(256662)	
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)		
Description:	Failure to provide a minimum pressure tank capacity of 220 gallons.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)(1)(A)		
Description:	Failure to inspect the ground storage tank at least annually.		
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TURBOCARE, INC.
RN101235489

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-1458-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding TurboCare, Inc. ("TurboCare") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and TurboCare appear before the Commission and together stipulate that:

1. TurboCare owns and operates a turbine repair and maintenance facility with a public water supply at 3100 South Sam Houston Parkway E in Houston, Harris County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. The Commission and TurboCare agree that the Commission has jurisdiction to enter this Agreed Order, and that TurboCare is subject to the Commission's jurisdiction.
3. TurboCare received notice of the violations alleged in Section II ("Allegations") on or about August 13, 2007.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by TurboCare of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Two Hundred Ten Dollars (\$210) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). TurboCare has paid One Hundred Sixty-Eight Dollars (\$168) of the administrative penalty and Forty-Two Dollars (\$42) is deferred contingent upon TurboCare's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If TurboCare fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require TurboCare to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and TurboCare have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that TurboCare has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, TurboCare is alleged to have failed to provide a minimum pressure tank capacity of 220 gallons, in violation of 30 TEX. ADMIN. CODE § 290.45(d)(2)(A)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on March 26, 2007. Specifically, the Facility currently operates one 120 gallon bladder pressure tank, which results in a 45% deficiency.

III. DENIALS

TurboCare generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that TurboCare pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and TurboCare's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: TurboCare, Inc., Docket No. 2007-1458-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that TurboCare shall undertake the following technical requirements:

- a. Within 90 days after the effective date of this Agreed Order, provide a minimum pressure tank capacity of 220 gallons, as required by 30 TEX. ADMIN. CODE § 290.45.
- b. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486


3. The provisions of this Agreed Order shall apply to and be binding upon TurboCare. TurboCare is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by TurboCare shall be made in writing to the Executive Director. Extensions are not effective until TurboCare receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against TurboCare in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to TurboCare, or three days after the date on which the Commission mails notice of the Order to TurboCare, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/10/2008

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

January 18, 2008

Date

Patrick W. Dunn

Name (Printed or typed)
Authorized Representative of
TurboCare, Inc.

General Manager

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

